

Subcommittee hearings and also on the Waco incident, on which I am now chairing a Judiciary Subcommittee on Department of Justice oversight.

In advance of any such action there are a number of alternatives which could be pursued. For example, the Court of Appeals for the 11th Circuit could be asked to expedite the appeals process. There are many precedents for prompt, expedited Circuit Court action such as that taken by the Court of Appeals for the 2nd Circuit on the Million Man March case in 1998. There, the District Court, by order dated August 26, 1998, allowed the March for September 5 and the Circuit Court heard arguments on September 1, 1998 and issued a written opinion the same day.

Another option would be to ask the Court of Appeals for the 11th Circuit to hear the case en banc which could be accomplished very promptly.

Yet another option is to ask the Supreme Court of the United States to take the case and hear it on an expedited basis which that Court has the authority to do at any time. The Pentagon Papers were published on June 12, 1971. The District Court issued a decision on June 19, the 2nd Circuit heard the case on June 22 and decided the case on June 23. The Supreme Court heard arguments on June 26 and decided the case on June 30, 1971.

In a case involving the Iranian hostages, the Solicitor General asked the Supreme Court for the United States for certification before judgment on June 10, 1981. The Supreme Court granted the request on June 11, ordered briefs within one week, heard arguments on June 24 and decided the case on July 2, 1981.

There is good reason to believe that the order of the 11th Circuit three-judge panel will be reversed for a number of reasons. One glaring error is that there is no basis for asylum for Elian Gonzales since that relief is granted when the individual faces persecution or some prospective ill treatment upon his return, which is certainly not the case with young Elian. If returned to Cuba, he will be the subject of adulation, not mistreatment.

Before resorting to action to take Elian from his Miami relatives, I urge you to seek a judicial order from the United States District Court authorizing such action by the Department of Justice. While perhaps not technically necessary, such an order might well be persuasive enough for the Miami relatives to turn Elian over voluntarily. Such an order may also be persuasive so that others would not impede Department of Justice action to take Elian from his Miami relatives.

I am sending a copy of this letter to the President, and I am sending you a copy of a letter I am writing to him.

Sincerely,

ARLEN SPECTER.

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC, April 21, 2000.

Hon. WILLIAM JEFFERSON CLINTON,
President, The White House, Washington, DC.

DEAR MR. PRESIDENT: With this letter, I am enclosing a copy of a letter which I am sending to Attorney General Reno suggesting a number of judicial remedies before any action is taken to return Elian Gonzales to his father other than through a voluntary turning over of the boy by his Miami relatives.

I am writing to you and the Attorney General without being privy to any of the ongoing negotiations, but only because of my concern about what happened at Ruby Ridge and Waco which involved incidents where I have been extensively involved in oversight of the Department of Justice by Senate Judiciary Subcommittees.

If there is to be any action taken by Federal law enforcement officials other than a voluntary turning over by the Miami relatives of Elian Gonzales, then I urge you to be personally involved and to consult with experts in the field, in addition to officials at the Department of Justice because of the deeply flawed actions taken by the Department of Justice at Ruby Ridge and Waco and in other law enforcement judgments of the Attorney General.

As noted in my letter to the Attorney General, the hand of the Federal Government can be considerably strengthened by a District Court order authorizing the Department of Justice to take Elian Gonzales from his Miami relatives and returned to his father.

It may well be that taking the potential use of force off the table would materially damage the Government's bargaining position with the Miami Gonzales family; but if force is to be used, it must be used with mature, measured judgment contrary to what was done at Ruby Ridge and Waco.

Sincerely,

ARLEN SPECTER.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, I seek recognition under the 10 minutes reserved on the Democratic side.

The PRESIDING OFFICER. The Senator is recognized.

REPUBLICAN PRIORITIES

Mr. DURBIN. Mr. President, we just heard a statement from the Senator from Pennsylvania which echoes the statements of many Republicans since the reuniting of Elian Gonzalez with his father. This was a very sad situation. The Attorney General's comments indicate she made extraordinary efforts on a personal basis and through the Department of Justice to resolve the differences between the members of this family involving this 6-year-old boy.

I am sorry it came to the process that it did in the early hours of the morning on Saturday. I understand up until the very last moment, negotiations were underway with the family, with the very basic goal of reuniting this little boy with his father.

I will never know what took place in those conversations, but I can certainly understand that when the decision was made to enforce the law, to enforce the subpoena, and to move forward, those agents who went into that home were entitled to protect themselves. They did not know, going into that home, whether there was any danger inside. The fact that they were armed, of course, is troublesome in the presence of a 6-year-old boy, but I do not believe a single one of us would ask any law enforcement agent in America—Federal, State, or local—to endanger their own lives by walking into a building without adequate protection and show of force.

I hope we will put this in perspective. I have been absolutely fascinated by the Republican response to this. To consider some of the statements that have been made by Republican leaders on Capitol Hill since this event in

Miami tells us a great deal about their priorities. There is a passion, there is a commitment, there is a sense of urgency to drop everything we are doing on Capitol Hill and move into a thorough investigation of this episode which occurred in the early morning hours of Saturday to decide whether or not Attorney General Reno was doing the appropriate thing in the way she approached it.

My question to the Republican majority in the Senate and the House is: Where is your passion, where is your sense of urgency, where is your commitment when it comes to the gun violence which is occurring on the streets of America every single day?

Yesterday, here in our Nation's Capital, families who gathered at the National Zoo for an annual holiday witnessed gun violence which claimed some seven victims, one of whom is now on life support and may not survive. Yet for a year—one solid year—the Republican leadership on Capitol Hill has refused to bring forward any gun safety legislation. Overnight they can call for an investigation of Attorney General Reno. Overnight they can bring her to Capitol Hill because of this question of what occurred in Miami. But for one solid year, they have been unwilling and unable to step up and do anything about gun safety to protect children and families across America.

Mr. DORGAN. Will the Senator yield?

Mr. DURBIN. No one was injured in the house of Elian Gonzalez's relatives in Miami. Thank God. But kids are injured every day across America. Twelve children are killed every day across America because of gun violence, and this Republican majority, which has this passion to investigate, ought to have the passion to legislate, to pass laws to make America safer. I would like to see some proportionality in the way they respond to the real issues facing American families.

I yield to my colleague from North Dakota.

Mr. DORGAN. Mr. President, I appreciate the Senator yielding to me.

This is a very sad chapter. It is a story of a 6-year-old child who has been used as a political football now for some many months—yes, by Fidel Castro, but also by some in this country—and it ought to stop. What happened the other morning in Miami is something none of us wants to see in this country, but it happened without violence occurring. No one was injured, and the fact is, a 6-year-old boy was restored to his father's care.

I have heard all of the stories and all of the words. I watched television last evening. I heard irresponsible statements about Waco, about storm troopers, all kinds of conjecture about secret meetings between Fidel Castro and officials in this country. Look, those things serve no purpose at this point.

This is a 6-year-old boy whose mother died and who now has been restored to the care of his father. Are there

those here who believe that a 6-year-old boy whose father loves him should not be restored to the care of his father? If so, then let's have a long debate about parental rights. I suspect they do not want to restore this young boy to the care of his father because his father is a Cuban and he will go back to Cuba and that is a Communist country. But I do not see people coming to the floor of the Senate talking much about the fate of the children in Vietnam—that is a Communist country—or the fate of the children in China—that is a Communist country.

All of a sudden, this one 6-year-old child whose mother is dead and whose father wants him, because he comes from Cuba, does not have the right to be restored to the care of his father? Something is wrong with this.

I understand there is great passion on all sides. The Attorney General was faced with an awful choice, and she made a choice. The choice she made was to use whatever show of force was necessary—not force; show of force was necessary—to prevent violence while they were able to get this boy and restore him to the care of his father.

The fact is, it worked. In a little under 3 minutes, they were able to get this boy. This boy, now we see in a smiling picture, is in his father's arms where he ought to be.

I know we can criticize Janet Reno and others till the Sun goes down and every day thereafter, but it is not going to change the fact that this boy belongs with his father. We all know that. We should not use this boy for some broader political purpose of U.S.-Cuba relations, anti-Castroism, this, that, or the other thing. This is not about Fidel Castro. This is about a 6-year-old child and his father.

Mr. LEAHY. Will the Senator yield?

Mr. DORGAN. I am happy to yield.

Mr. LEAHY. I am pleased to hear both of my distinguished colleagues talking about the necessity to protect those who go into a situation such as that. In an earlier career in law enforcement I had the experience of going on raids or arrests or hostage situations, oftentimes in the middle of the night. They are a very frightening thing.

I suspect those immigration officers and marshals also have families who worry about whether they are going to come back alive. They are entitled to some protection, too. They talk about a frightening picture of a man so intimidating that everybody would stand still. His finger was not on the trigger of his gun. If you look at the picture, the safety was on the weapon. An unarmed female INS officer, with no body armor or anything else, came in there, putting her own life at risk so the little boy would not be frightened when she picked him up. And she spoke to him in Spanish.

The Miami relatives could have avoided this. The Miami relatives took a position they wanted to help little Elian and hurt Fidel Castro. They

helped Fidel Castro and hurt little Elian. They should have given him back to his father long ago. Instead, they made this whole situation necessary.

The officers who went in there are entitled to protect themselves. If I were their spouse, if I were their child, I would hope that they would. Then to accuse them of brainwashing or drugging this little boy is scandalous. These marshals, who took the little boy into their custody, are sworn to give their own life, if necessary, to protect the person they have in their custody.

They were there to protect the little boy. They did protect the little boy. He is now back with his father where he belongs.

I resent the statement of some of the Miami relatives saying these pictures of a happy child with his father are doctored, that it is not really little Elian, that they substituted someone else for him, or that the marshals drugged him. One relative even said the only reason he called his father from the airplane was because they put a gun to his head. This is outrageous.

These brave men and women, who constantly put their lives on the line to protect the people of this country, including oftentimes Members of Congress, ought to be praised.

Mr. DURBIN. Mr. President, how much time is remaining?

The PRESIDING OFFICER (Mr. FRIST). Twenty seconds.

Mr. DURBIN. Let me close by saying I hope we will see the same passion, the same commitment, the same sense of urgency from the Republican side when it comes to gun safety legislation, when it comes to legislation for a Patients' Bill of Rights, when it comes to a prescription drug benefit, as we have seen in their passion to continue to investigate every member of the Clinton administration.

PROPOSING AN AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES TO PROTECT THE RIGHTS OF CRIME VICTIMS—MOTION TO PROCEED—Continued

The PRESIDING OFFICER. The time until 12:30 p.m. shall be equally divided between the two leaders.

The Senator from Arizona.

Mr. KYL. Mr. President, this is a historic time because we are about to commence a debate on an amendment that has passed through the Senate Judiciary Committee but has not yet come to the floor of the Senate; that is, an amendment to the U.S. Constitution to protect the rights of victims of violent crime.

I am very pleased this morning, along with Senator DIANNE FEINSTEIN of California, to be making the primary case in support of this amendment.

I would like to make some opening remarks and then turn our opening

time over to Senator FEINSTEIN for a discussion of the history of this amendment and much of the articulation of the need for it. But let me make a few preliminary comments.

First of all, we have heard a little bit about passion on a related matter. I can tell you there is nothing about which I am more passionate these days than supporting the rights of victims of violent crime.

According to the Department of Justice, there are over 8 million victims of violent crime in our society every year. Not enough is being done to protect the rights of these victims. They have no constitutional rights, unlike the defendants. Those accused of crime have more than a dozen rights which have been largely secured by amendments to the U.S. Constitution.

They, of course, trump any rights that States, either by statute or State constitutional provision, grant to the victims of crime.

It is time to level the playing field, to balance the scales of justice, and provide some rights for victims of crime. These are very basic and simple rights, as Senator FEINSTEIN will articulate in just a moment.

To secure basic rights to be informed and to be present and to be heard at critical stages throughout the judicial process is the least that our society owes people it has failed to protect.

Thirty-two State constitutional amendments have been passed by an average popular vote of nearly 80 percent. Clearly, the American people have developed a consensus that the rights of crime victims deserve protection.

Unfortunately, these State provisions have not been applied with sufficient seriousness to ensure the protection of these victims of crime.

Let me note some quotations, first from the Attorney General of the United States, and then from attorneys general—these are the law enforcement officials of our country—and the Governors, who, of course, are the chief executives of the various States.

Attorney General Reno explained, in testimony before the Senate Judiciary Committee:

Efforts to secure victims' rights through means other than a constitutional amendment have proved less than fully adequate. Victims' rights advocates have sought reforms at the State level for the past 20 years. However, these efforts have failed to fully safeguard victims' rights. These significant State efforts simply are not sufficiently consistent, comprehensive, or authoritative to safeguard victims' rights.

Legal commentators have reached the same conclusion.

For example, Harvard law professor Laurence Tribe has explained that the existing statutes and State amendments "are likely, as experience to date sadly shows, to provide too little real protection whenever they come into conflict with bureaucratic habit, traditional indifference, sheer inertia, or any mention of an accused's rights regardless of whether those rights are genuinely threatened."